



211 LEON SULLIVAN WAY • CHARLESTON, WV 25301 • 304.720.2101 • FAX: 304.720.2121

February 11, 2002

VIA OVERNIGHT DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL



**Re: CC Docket No. 96-45/
FiberNet, LLC's Petition for Waiver**

Dear Ms. Salas:

Pursuant to Federal Communications Commission Rule 1.3, enclosed for filing please find the original and six (6) copies of FiberNet, LLC's ("FiberNet") Petition for Waiver of FCC Rule Section 54.307(c)(3).

Please acknowledge receipt of this filing by date-stamping the extra copy of this filing and returning it to me in the enclosed self-addressed stamped envelope.

Please address any inquiries or further correspondence regarding this filing to my attention at 211 Leon Sullivan Way, Charleston, West Virginia 25301. Should you need to contact me directly, I may be reached by telephone at (304) 720-2159, by facsimile at (304) 720-2121, or by e-mail at shamula@wvfibernet.net.

Sincerely,

STEVEN HAMULA
Director of Regulatory Affairs
FiberNet, L.L.C.

SH/s
Enclosures

No. of Copies rec'd 045
List A B C D E

328 Neville Street
Beckley, WV 25801
304.929.2101
Fax: 304.929.2114

10 Hale Street
First Floor
Charleston, WV 25301
304.720.2101
Fax: 304.720.2114

719 Fairmont Avenue
Suite 203
Fairmont, WV 26554
304.333.2101
Fax: 304.333.2114

1102 Third Avenue
Huntington, WV 25710
304.781.2101
Fax: 304.781.2114

412 Market Street
Suite 203
Parkersburg, WV 26101
304.865.2101
Fax: 304.865.2114

38 Fifteenth Street
Suite 200
Wheeling, WV 26003
304.230.2101
Fax: 304.230.2114

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)	
)	
FIBERNET, LLC)	
)	CC Docket No. 96-45
Petition for Waiver of FCC Rule)	
Section 54.307(c)(3))	

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

FiberNet, LLC (“FiberNet”), by counsel and pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby respectfully requests that the Federal Communications Commission (“FCC”) grant a waiver of Section 54.307(c)(3). Specifically, FiberNet requests that the FCC accept FiberNet’s loop count information as of July 31, 2001 for calculation of universal service fund support, which is being filed after the deadline established for the submittal of such information, so that vital universal service fund support to FiberNet can begin. In support of this Petition, FiberNet respectfully states the following:

I. BACKGROUND

FCC Rule Section 54.307(b) states that in order to receive support, a competitive eligible telecommunications carrier like FiberNet must report the number of working loops it serves in a service area pursuant to the schedule set forth in Section 54.307(c). In order to be eligible to receive universal service fund support beginning with the second quarter of calendar year 2002, FiberNet would be required to submit the working loop

No. of Copies rec'd 045
List A B C D E

data required by Section 54.307(b) as of July 31st of the existing calendar year (2001) by no later than December 30th.

FiberNet's initial universal service fund certification was filed with the FCC and with the Universal Service Administrative Company ("USAC") by the Public Service Commission of West Virginia ("PSCWV") by December 31, 2001, in order for FiberNet to be eligible to receive universal service fund support beginning the second quarter of calendar year 2002. However, due to the sheer volume of new information associated with universal service fund eligibility, and in order to upgrade its operations systems necessary to accurately capture wire center and loop information, FiberNet was not able to submit its line count information by December 30, 2001. FiberNet is currently preparing this line count information and anticipates that it will be submitted to the National Exchange Carrier Association ("NECA") for processing by no later than February 15, 2002.

II. ARGUMENT

FiberNet just recently obtained Eligible Telecommunications Carrier ("ETC") status in the State of West Virginia in the designated service areas of Verizon West Virginia, Inc. and Citizens Telecommunications Company of West Virginia.¹ Because FiberNet is a small competitive local exchange carrier ("CLEC"), universal service fund support is critically important to the future expansion of FiberNet's operations. In this regard, universal service fund support will assist and allow FiberNet to provide competitive choice and quality telecommunications service offerings to the rural and high

¹ FiberNet, LLC's Petition for Designation as an Eligible Telecommunications Carrier in the State of West Virginia was granted by Final Order of the Public Service Commission of West Virginia on November 20, 2001 in Case No. 01-0488-T-PC.

cost areas of West Virginia. Given this fact, it would clearly be contrary to the public interest and to the goals of the Telecommunications Act of 1996 to penalize FiberNet by not allowing it to receive vital universal service fund support that was expected beginning with the second quarter of calendar year 2002 for inadvertently missing the line count submittal deadline of December 30, 2001.

As a general matter, FCC rules may be waived for good cause shown. Certainly, FiberNet understands that the FCC's rules are presumed to be valid.² However, the FCC may exercise its discretion to waive a rule where the particular facts present in a given case make strict compliance inconsistent with the public interest.³ Additionally, the FCC may take into account considerations of hardship, equity, or the more effective implementation of overall public policy on an individual case basis.⁴ Waiver of the FCC's rules is therefore appropriate where special circumstances warrant a deviation from the general rule, and where such deviation will serve the public interest.

In FiberNet's view, the underlying purpose of the FCC's rule governing the submittal of loop count information would not be served by its strict application in the instant case. As a new ETC, this is the first time that FiberNet has worked with the various rules, regulations and entities established for purposes of governing the disbursement of universal service fund support. As noted above, FiberNet did not receive its designation as an ETC from the PSCWV until November 20, 2001. FiberNet then quickly filed its verified statement with the PSCWV of its intention to utilize universal service fund support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with Section 254(e) of the

² WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ WAIT Radio, 418 F.2d at 1159; Northeast Cellular, 897 F.2d at 1166.

Telecommunications Act of 1996. The PSCWV then found it appropriate to certify to the FCC and USAC that FiberNet was eligible to receive federal universal service fund support beginning in the second quarter of calendar year 2002.⁵

No other person or entity will be prejudiced by the granting of the instant petition and only those customers currently lacking in competitive choice in the rural and high cost areas of West Virginia will be harmed by its denial. As mentioned earlier, the grant of this request would clearly serve the public interest. The Universal Service Program is intended in part to promote competitive choice and access to advanced and other telecommunications services in areas where the costs of providing those services have been historically high. FiberNet's offering of telecommunications service to the rural and high cost areas of West Virginia would certainly further this goal. Clearly, FiberNet is entitled to receive universal service fund support, and such support will enable FiberNet to expand its operations so as to provide competitive choice and quality telecommunications service to those West Virginians located in rural and high cost areas. Without the receipt of this universal service fund support, FiberNet will be forced to delay the introduction of its telecommunications services to those areas and communities of West Virginia that currently lack competitive choice due to the high cost of providing service therein.

III. REQUEST FOR EXPEDITED ACTION

FiberNet respectfully requests that the FCC take expedited action on this Petition in order to avoid any delay in the receipt of universal service fund support. As noted previously, FiberNet has made plans to enter certain rural and high cost areas of West

⁵ See, generally, Commission Order of the Public Service Commission of West Virginia dated December 21, 2001, in Case No. 01-1129-T-PC (Reopened).

Virginia that currently have no choice for the provision of telecommunications service aside from the incumbent local exchange carrier. In the absence of expedited action by the FCC, FiberNet will be compelled to delay the introduction of its telecommunications services to these areas due to the lack of universal service fund support. Subscribers located in these rural and high cost areas of West Virginia will thus be harmed by strict enforcement of this rule. In short, FiberNet asserts that special circumstances exist in the instant case which warrant deviation from the deadline established for the submittal of loop count data pursuant to Section 54.307(c)(3), and further that such deviation will serve the public interest.

IV. CONCLUSION

For all the reasons hereinabove stated, FiberNet respectfully requests that the Federal Communications Commission grant a waiver of Section 54.307(c)(3) pertaining to the deadline established for the submittal of loop count data. FiberNet also respectfully requests that the Federal Communications Commission allow the acceptance of FiberNet's loop count information so as to permit it to receive vitally important universal service fund support beginning with the second quarter of calendar year 2002.

Respectfully submitted this 11th day of February, 2002.

BY:

A handwritten signature in black ink, appearing to read "Steven Hamula", is written over a horizontal line.

STEVEN HAMULA, ESQUIRE

FiberNet, LLC

211 Leon Sullivan Way

Charleston, WV 25301

Tele: (304) 720-2159

Fax: (304) 720-2121

CERTIFICATE OF SERVICE

I, Steven Hamula, Director of Regulatory Affairs for FiberNet, LLC, hereby certify that I have, on this 11th day of February, 2002, placed in the United States Mail, First Class, Postage Prepaid, a copy of the foregoing "Petition for Waiver" filed today to the following:

Sharon Webber
Deputy Chief, Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Irene Flannery
Universal Service Administration Company
2120 L. Street, N.W., Suite 600
Washington, D.C. 20037

Thomas Webb
National Exchange Carrier Association
80 South Jefferson Road
Whippany, New Jersey 07981


STEVEN HAMULA